COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 056662-00**

Laura Harwood	Employee
City of Worcester School Department	Employer
City of Worcester	Self-insurer

REVIEWING BOARD DECISION
(Judges Horan, Carroll and McCarthy)

APPEARANCES
Malcolm L. Burdine, Esq., for the employee
Lisa M. Carmody, Esq., for the self-insurer

HORAN, J. The employee appeals from the denial of her claim for benefits for an alleged psychological injury resulting from a physical assault. Because the judge's findings are inconsistent on a matter central to the issue of causation, we recommit the case for further findings of fact.

Laura Harwood is a thirty-five year-old high school graduate with training certificates in early childhood education. In August 1999, she was employed as an instructional assistant at a Worcester elementary school; her students were children with behavioral disorders. On February 17, 2000, a student kicked her in the stomach with sufficient force to knock her against a wall. She treated and resumed employment the next scheduled workday. (Dec. 5-6.)

The employee brought charges against the student who assaulted her, but later felt threatened by the student's father, and unsupported by the school administration in her role as complainant in the case. Following a court appearance in March 2000, she missed five days of work. In May 2000, she received a negative performance review and was transferred to another school. Ms. Harwood made a second court appearance in September 2000. She took several sick days in January 2001, and left work on March 26, 2001. (Dec. 6-7.)

The employee filed her workers' compensation claim in September of 2001; the self-insurer denied the claim. At conference, the employee claimed work-related injuries to her stomach and back led to the development of post-traumatic stress disorder. She claimed indemnity benefits from June 15, 2000 and continuing. The judge ordered the self-insurer to pay § 34 benefits from the conference date, February 26, 2002, and continuing. He also ordered the payment of medical benefits. Both parties appealed the conference order; following the hearing, the judge denied and dismissed the claim.[1]

The insurer raised the issue of § 1(7A) at conference and hearing. At hearing, and on appeal, the self-insurer argues that two provisions contained in § 1(7A) operate to defeat the employee's post traumatic stress disorder claim. First, the insurer posits the "predominant contributing cause" standard applies, and that the evidence fails to satisfy it. The judge rejected this notion, as the emotional injury claimed arose from the employee's work-related physical injury. (Dec. 8.) See Cornetta v. Nashoba Valley Tech. High School, 19 Mass. Workers' Comp. Rep. ___ (November 5, 2005); Murphy v. Lawrence General Hosp., 10 Mass. Workers' Comp. Rep. 263 (1996). We find no fault with the judge's analysis on this point.

Second, the self-insurer argues the employee's prior psychiatric treatment for anxiety and depression mandated that, as a matter of law, the employee was required to prove her resulting disability or need for treatment under the heightened causation standard found in §1(7A).[2] The § 11A physician, Dr.

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[1] This information has been gleaned from an examination of the board file. See Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n. 3 (2002).

[2] G. L. c. 152, § 1(7A), provides, in relevant part:

> If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

Kenneth Jaffe, a psychiatrist, examined the employee on July 18, 2002, almost two and one-half years after the work incident. Neither party deposed Dr. Jaffe. (Dec. 7.) The judge, *sua sponte*, requested additional medical evidence. (Dec. 3.) Both parties submitted additional medical evidence consisting of the records of Dr. Cutler, Dr. Young, UMass Memorial Hospital, and Psychiatry and Counseling Associates (including the opinion of Dr. Rothman). (Dec. 4.) The judge found the employee sustained a physical injury as a result of the assault, but concluded the work injury was not a major cause of her alleged psychiatric disability. (Dec. 9.)

The employee appeals, raising a number of issues. One requires recommittal. The employee maintains the judge erred by applying § 1(7A)'s "a major but not necessarily predominant" causation standard. She claims the applicable standard is the simple causation standard for physical trauma resulting in emotional distress enunciated in Murphy, supra. Because the judge relied on a medical opinion on causation containing no history of the work injury, a history that he accepted as true, the judge's causation finding is flawed. As a result, we cannot determine which causation standard -- simple "but for" causation or § 1(7A) "a major" causation -- should have applied to this claim.[3] We note the opinion of Dr. Cutler, re-examined in light of our opinion, would support a finding of compensability under the lighter "but for" standard.

Though the judge made extensive findings on the "a major cause" component of § 1(7A), his findings regarding whether the employee had a pre-existing condition, defining said condition, and whether it combined with her work injury sufficient to justify compensability, are inadequate. We understand the judge's findings concerning the employee's "history of panic attacks, dysphoric mood and post-traumatic stress disorder secondary to childhood abuse" and her "required treatment for panic attacks, anxiety and depression prior to the date of

[3] On recommittal, the judge should reconsider the applicable causation standard and make, as the credited evidence requires, all necessary Vieira findings. See Vieira v. D'Agostino Assoc., 19 Mass. Workers' Comp. Rep. 50 (2005).

injury," (Dec. 8) to mean that she had a pre-existing condition.[4] However, these findings were based on Dr. Rothman's assessment, and the judge specifically found that Dr. Rothman had *no history* of the employee's injury at work. (Dec. 7.) Without a history of the employee's work injury, it would be impossible for Dr. Rothman to opine as to whether that injury was a cause, much less a major cause, of the employee's emotional problems. The judge's reliance on Dr. Rothman's opinion to defeat the claim, therefore, is contrary to the facts, which the judge himself found, surrounding the physical injury and its sequelae. Such incongruous findings render the decision contrary to law. We vacate the decision, and recommit the case for further findings on all applicable elements of § 1(7A).

So ordered.

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Mark D. Horan
Administrative Law Judge

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Martine Carroll
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

Filed: March 20, 2006

[4] When considering the element of "combination" found in § 1(7A), the judge must be careful not to equate, without medical evidence to support his conclusions, treatment for anxiety and depression with post traumatic stress disorder. According to the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, 4th ed., text revision, 2000 ("D.S.M. – IV"), the diagnoses of "major depression" (§ 296.33) and "post traumatic stress disorder" (§ 309.81) are comprised of different elements. The employee claimed disability flowing from the latter.